IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No.1315 of 2001.
Judgment Reserved on: 30.04.2007.
Date of decision: 09.05.2007.

Jar Chhering …..**Petitioner.**

Versus

State of H.P. & Others …..**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

For the Petitioner: **Mr.G.D. Verma, Senior Advocate with Mr.Romesh Verma, Advocate.**

For Respondents 1 to 4: **Mr.M.S. Chandel, Advocate General with Mr.Virender Verma,Additional Advocate General.**

For Respondent No.5: **Mr.N.K. Thakur, Advocate.**

Dev Darshan Sud,J.

The petitioner is aggrieved by the order of the Financial Commissioner which has been passed on a revision petition having been filed by him challenging the Nautor grant made in favour of respondent No.5 herein. Review Petition preferred by the petitioner against the rejection of the revision was also dismissed.

Facts necessary for the decision of this writ petition are that the petitioner had applied for grant of Nautor on 3.7.1989 (Annexure P-1) before the Sub

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement*?**

Divisional Officer, Kalpa. The application was made for grant of land in Khasra Nos.16, 20 and 33 situated in Up Mohal Tarkhawa, Tehsil Kalpa. The petitioner had submitted that he wanted to carry on horticulture planting on the land to earn his livelihood. The request was rejected with the observations that the Forest Department had stated that the area was full of trees and therefore, the land could not be sanctioned for any other use. Being aggrieved by this order, the petitioner appealed to Deputy Commissioner, who vide his order Annexure P-2 dated 25.10.1990 dismissed the appeal preferred by the appellant under Rule 28 of the HP Nautor land Rules, 1968, holding that there are 13 trees standing on the land and that the Forest Department has objected to such grant. He also observed that the land is in Peo Township Planning Area and if the Nautor is sanctioned, it will effect the future expansion of the Town, which is in its nascent stages.

Thereafter respondent No.5, applied to respondent No.4 for grant of Nautor qua this land who vide his order dated 22.11.1996 (Annexure P-3), sanctioned the grant of Khasra No.33/1. Be it stated that it was the same area for which the petitioner had applied. The petitioner filed an appeal before the Deputy Commissioner, respondent No.3, against this grant, who dismissed the appeal. Being aggrieved by this order, the appellant preferred a revision under Rule 30 of the HP Nautor Rules before the Commissioner,

Shimla Division. The Commissioner has considered the matter in detail and by his order dated 17.11.1997 (Annexure P-5) sent his recommendations to the Financial Commissioner to the effect that the grant made to respondent No.5 should be cancelled and that both, the petitioner and respondent No.5, may apply for other land outside the Planning area subject to eligibility. While disposing of the revision, the Commissioner has considered the record in detail of the authorities dealing/recommending the grant and held that the Deputy Commissioner in his comments dated 28.10.1997 had rejected the case of the petitioner merely on account of the fact that there were trees on the land, and not because the land was within the Peo Township Planning area or likely to be included as such. He observes that there is no bar to grant Nautor land in this area. He further holds that the Special Area Development Authority has been constituted for Reckong Peo for its planned development and if allotment of Nautor land is made then in that event it would adversely effect the development project. He, therefore, made recommendations that the petitioner as also respondent No.5 may apply fresh to the Authorities for grant of Nautor land. The Financial Commissioner in Revision, vide Annexure P-6, did not accept the recommendations of the Commissioner on the ground that there were number of trees on the land which was subject matter of allotment. Secondly he held that the petitioner was not found

eligible for grant of the land under the H.P. Grant of Nautor Land Rules, 1968. He holds that the area does not fall within the limits of Peo Township. This finding was made on the basis of a statement having been made by the SDO(C), Kalpa at Reckong Peo before the Financial Commissioner during the course of proceedings. A Review Petition filed has also been dismissed. The petitioner has now filed this petition against the rejection of his case.

I have heard learned counsel for the parties and have gone through the record.

From the material which has been placed on the record, I find that the Authorities are passing contradictory orders. Surely, if the land was full of trees (in this case Khasra No.33) this is a factor which would be relevant for the grant for all persons who approached the Authorities. Again, the Deputy Commissioner as also the Commissioner have observed that the area falls near the Township and within the purview of the land required for development. It is not clear as to how the Financial Commissioner has come to the opposite conclusion on the statement of the SDO(C) stating otherwise. The nature of the record is unsatisfactory. The factors favouring the grant in favour of respondent No.5 would be the same which would be applicable to the petitioner. Surely, he cannot be discriminated against. The order of the Financial Commissioner shows a non-application of mind and is not

based on any material on the record. When the Commissioner had come to the conclusion that the case requires reconsideration, there was no reason to have upheld the grant of respondent No.5 on any ground.

Under the circumstances, this writ petition is accepted. The order of revision of the Financial Commissioner Annexure P-6 and the order of review Annexure P-7 are quashed and set aside. A direction is issued to the respondents to reconsider the entire matter in terms of the recommendations made by the Commissioner vide Annexure P-5. Needless to say that the parties will be given a full opportunity for presenting their case. The parties will appear before the Financial Commissioner on the ***20th June, 2007*** who shall endeavor to dispose of the case within a period of six months from today by a reasoned decision. There shall be no order as to costs.

May 9, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**